

110TH CONGRESS  
2D SESSION

# S. 2592

To amend the Internal Revenue Code of 1986 to provide for permanent tax incentives for economic growth.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 2008

Mr. DEMINT introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for permanent tax incentives for economic growth.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Economic Growth Act  
5 of 2008”.

6 **SEC. 2. REPEAL OF CERTAIN LIMITATIONS ON THE EX-**  
7 **PENSING OF SECTION 179 PROPERTY.**

8 (a) IN GENERAL.—Section 179 of the Internal Rev-  
9 enue Code of 1986 is amended by striking subsection (b)

1 and by redesignating subsections (c) and (d) as sub-  
 2 sections (b) and (c), respectively.

3 (b) EXPENSING OF SECTION 1250 PROPERTY.—Sub-  
 4 paragraph (B) of section 179(d)(1) of such Code is  
 5 amended by inserting “or section 1250 property (as de-  
 6 fined in section 1250(c))” after “section 1245 property  
 7 (as defined in section 1245(a)(3))”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) Subsection (c) of section 179 of such Code,  
 10 as redesignated by subsection (a), is amended by  
 11 striking paragraphs (6) and (8), and by redesign-  
 12 ating paragraphs (7), (9), and (10) as paragraphs  
 13 (6), (7), and (8), respectively.

14 (2) Paragraph (6) of section 179 of such Code,  
 15 as redesignated by paragraph (1) and subsection (a),  
 16 is amended by striking “paragraphs (2) and (6)”  
 17 and inserting “paragraph (2)”.

18 (3) Sections 42(d)(2)(B)(i), 1397D(d)(1),  
 19 1400B(b)(4)(A)(i) and 1400F(b)(4)(A)(i) of such  
 20 Code are each amended by striking “section  
 21 179(d)(2)” and inserting “section 179(c)(2)”.

22 (4) Subclause (I) of section 42(d)(2)(D)(iii) of  
 23 such Code is amended—

24 (A) by striking “section 179(d)” and in-  
 25 serting “section 179(c)”, and

1 (B) by striking “section 179(d)(7)” and  
2 inserting “section 179(c)(6)”.

3 (5)(A) Subpart B of part III of subchapter U  
4 of chapter 1 of such Code is hereby repealed.

5 (B) The table of subparts for such part III is  
6 amended by striking the item relating to subpart B.

7 (6)(A) Part III of subchapter X of chapter 1 of  
8 such Code is amended by striking section 1400J.

9 (B) The table of sections for such part is  
10 amended by striking the item relating to section  
11 1400J.

12 (C) Paragraph (3) of section 1400E(b) of such  
13 Code is amended by striking “sections 1400F and  
14 1400J” and inserting “section 1400F”.

15 (7) Clause (iv) of section 1400L(b)(2)(A) of  
16 such Code is amended by striking “section 179(d)”  
17 and inserting “section 179(c)”.

18 (8) Section 1400L of such Code is amended by  
19 striking subsection (f).

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to property placed in service in  
22 taxable years beginning after December 31, 2007.

1 **SEC. 3. REDUCTION IN CORPORATE MARGINAL INCOME**  
 2 **TAX RATES.**

3 (a) GENERAL RULE.—Paragraph (1) of section 11(b)  
 4 of the Internal Revenue Code of 1986 is amended—

5 (1) by inserting “and” at the end of subpara-  
 6 graph (A),

7 (2) by striking “but does not exceed \$75,000,”  
 8 in subparagraph (B) and inserting a period,

9 (3) by striking subparagraphs (C) and (D), and

10 (4) by striking the last 2 sentences.

11 (b) PERSONAL SERVICE CORPORATIONS.—Para-  
 12 graph (2) of section 11(b) of such Code is amended by  
 13 striking “35 percent” and inserting “25 percent”.

14 (c) CONFORMING AMENDMENTS.—Paragraphs (1)  
 15 and (2) of section 1445(e) of such Code are each amended  
 16 by striking “35 percent” and inserting “25 percent”.

17 (d) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to taxable years beginning after  
 19 December 31, 2007, except that the amendments made  
 20 by subsection (c) shall take effect on the date of the enact-  
 21 ment of this Act.

22 **SEC. 4. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF**  
 23 **DETERMINING GAIN OR LOSS.**

24 (a) IN GENERAL.—Part II of subchapter O of chap-  
 25 ter 1 (relating to basis rules of general application) is  
 26 amended by redesignating section 1023 as section 1024

1 and by inserting after section 1022 the following new sec-  
2 tion:

3 **“SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES**  
4 **OF DETERMINING GAIN OR LOSS.**

5 “(a) GENERAL RULE.—

6 “(1) INDEXED BASIS SUBSTITUTED FOR AD-  
7 JUSTED BASIS.—Solely for purposes of determining  
8 gain or loss on the sale or other disposition by a tax-  
9 payer (other than a corporation) of an indexed asset  
10 which has been held for more than 3 years, the in-  
11 dexed basis of the asset shall be substituted for its  
12 adjusted basis.

13 “(2) EXCEPTION FOR DEPRECIATION, ETC.—  
14 The deductions for depreciation, depletion, and am-  
15 ortization shall be determined without regard to the  
16 application of paragraph (1) to the taxpayer or any  
17 other person.

18 “(3) WRITTEN DOCUMENTATION REQUIRE-  
19 MENT.—Paragraph (1) shall apply only with respect  
20 to indexed assets for which the taxpayer has written  
21 documentation of the original purchase price paid or  
22 incurred by the taxpayer to acquire such asset.

23 “(b) INDEXED ASSET.—

24 “(1) IN GENERAL.—For purposes of this sec-  
25 tion, the term ‘indexed asset’ means—

1           “(A) common stock in a C corporation  
2           (other than a foreign corporation), or

3           “(B) tangible property,  
4           which is a capital asset or property used in the trade  
5           or business (as defined in section 1231(b)).

6           “(2) STOCK IN CERTAIN FOREIGN CORPORA-  
7           TIONS INCLUDED.—For purposes of this section—

8           “(A) IN GENERAL.—The term ‘indexed  
9           asset’ includes common stock in a foreign cor-  
10          poration which is regularly traded on an estab-  
11          lished securities market.

12          “(B) EXCEPTION.—Subparagraph (A)  
13          shall not apply to—

14               “(i) stock of a foreign investment  
15               company,

16               “(ii) stock in a passive foreign invest-  
17               ment company (as defined in section  
18               1296),

19               “(iii) stock in a foreign corporation  
20               held by a United States person who meets  
21               the requirements of section 1248(a)(2),  
22               and

23               “(iv) stock in a foreign personal hold-  
24               ing company.

1           “(C) TREATMENT OF AMERICAN DEPOSI-  
 2           TORY RECEIPTS.—An American depository re-  
 3           ceipt for common stock in a foreign corporation  
 4           shall be treated as common stock in such cor-  
 5           poration.

6           “(c) INDEXED BASIS.—For purposes of this sec-  
 7           tion—

8           “(1) GENERAL RULE.—The indexed basis for  
 9           any asset is—

10           “(A) the adjusted basis of the asset, in-  
 11           creased by

12           “(B) the applicable inflation adjustment.

13           “(2) APPLICABLE INFLATION ADJUSTMENT.—  
 14           The applicable inflation adjustment for any asset is  
 15           an amount equal to—

16           “(A) the adjusted basis of the asset, multi-  
 17           plied by

18           “(B) the percentage (if any) by which—

19           “(i) the gross domestic product  
 20           deflator for the last calendar quarter end-  
 21           ing before the asset is disposed of, exceeds

22           “(ii) the gross domestic product  
 23           deflator for the last calendar quarter end-  
 24           ing before the asset was acquired by the  
 25           taxpayer.

1       The percentage under subparagraph (B) shall be  
2       rounded to the nearest  $\frac{1}{10}$  of 1 percentage point.

3               “(3) GROSS DOMESTIC PRODUCT DEFLATOR.—

4       The gross domestic product deflator for any cal-  
5       endar quarter is the implicit price deflator for the  
6       gross domestic product for such quarter (as shown  
7       in the last revision thereof released by the Secretary  
8       of Commerce before the close of the following cal-  
9       endar quarter).

10       “(d) SUSPENSION OF HOLDING PERIOD WHERE DI-  
11       MINISHED RISK OF LOSS; TREATMENT OF SHORT  
12       SALES.—

13               “(1) IN GENERAL.—If the taxpayer (or a re-  
14       lated person) enters into any transaction which sub-  
15       stantially reduces the risk of loss from holding any  
16       asset, such asset shall not be treated as an indexed  
17       asset for the period of such reduced risk.

18               “(2) SHORT SALES.—

19               “(A) IN GENERAL.—In the case of a short  
20       sale of an indexed asset with a short sale period  
21       in excess of 3 years, for purposes of this title,  
22       the amount realized shall be an amount equal  
23       to the amount realized (determined without re-  
24       gard to this paragraph) increased by the appli-  
25       cable inflation adjustment. In applying sub-



1 section (c)(2) for purposes of the preceding sen-  
 2 tence, the date on which the property is sold  
 3 short shall be treated as the date of acquisition  
 4 and the closing date for the sale shall be treat-  
 5 ed as the date of disposition.

6 “(B) SHORT SALE PERIOD.—For purposes  
 7 of subparagraph (A), the short sale period be-  
 8 gins on the day that the property is sold and  
 9 ends on the closing date for the sale.

10 “(e) TREATMENT OF REGULATED INVESTMENT  
 11 COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

12 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

13 “(A) IN GENERAL.—Except as otherwise  
 14 provided in this paragraph, the adjustment  
 15 under subsection (a) shall be allowed to any  
 16 qualified investment entity (including for pur-  
 17 poses of determining the earnings and profits of  
 18 such entity).

19 “(B) EXCEPTION FOR CORPORATE SHARE-  
 20 HOLDERS.—Under regulations—

21 “(i) in the case of a distribution by a  
 22 qualified investment entity (directly or in-  
 23 directly) to a corporation—

24 “(I) the determination of whether  
 25 such distribution is a dividend shall be

1 made without regard to this section,  
2 and

3 “(II) the amount treated as gain  
4 by reason of the receipt of any capital  
5 gain dividend shall be increased by the  
6 percentage by which the entity’s net  
7 capital gain for the taxable year (de-  
8 termined without regard to this sec-  
9 tion) exceeds the entity’s net capital  
10 gain for such year determined with re-  
11 gard to this section, and

12 “(ii) there shall be other appropriate  
13 adjustments (including deemed distribu-  
14 tions) so as to ensure that the benefits of  
15 this section are not allowed (directly or in-  
16 directly) to corporate shareholders of quali-  
17 fied investment entities.

18 For purposes of the preceding sentence, any  
19 amount includible in gross income under section  
20 852(b)(3)(D) shall be treated as a capital gain  
21 dividend and an S corporation shall not be  
22 treated as a corporation.

23 “(C) EXCEPTION FOR QUALIFICATION  
24 PURPOSES.—This section shall not apply for  
25 purposes of sections 851(b) and 856(c).

1           “(D) EXCEPTION FOR CERTAIN TAXES IM-  
2           POSED AT ENTITY LEVEL.—

3           “(i) TAX ON FAILURE TO DISTRIBUTE  
4           ENTIRE GAIN.—If any amount is subject to  
5           tax under section 852(b)(3)(A) for any  
6           taxable year, the amount on which tax is  
7           imposed under such section shall be in-  
8           creased by the percentage determined  
9           under subparagraph (B)(i)(II). A similar  
10          rule shall apply in the case of any amount  
11          subject to tax under paragraph (2) or (3)  
12          of section 857(b) to the extent attributable  
13          to the excess of the net capital gain over  
14          the deduction for dividends paid deter-  
15          mined with reference to capital gain divi-  
16          dends only. The first sentence of this  
17          clause shall not apply to so much of the  
18          amount subject to tax under section  
19          852(b)(3)(A) as is designated by the com-  
20          pany under section 852(b)(3)(D).

21          “(ii) OTHER TAXES.—This section  
22          shall not apply for purposes of determining  
23          the amount of any tax imposed by para-  
24          graph (4), (5), or (6) of section 857(b).

1           “(2) ADJUSTMENTS TO INTERESTS HELD IN  
2 ENTITY.—

3           “(A) REGULATED INVESTMENT COMPA-  
4 NIES.—Stock in a regulated investment com-  
5 pany (within the meaning of section 851) shall  
6 be an indexed asset for any calendar quarter in  
7 the same ratio as—

8                   “(i) the average of the fair market  
9 values of the indexed assets held by such  
10 company at the close of each month during  
11 such quarter, bears to

12                   “(ii) the average of the fair market  
13 values of all assets held by such company  
14 at the close of each such month.

15           “(B) REAL ESTATE INVESTMENT  
16 TRUSTS.—Stock in a real estate investment  
17 trust (within the meaning of section 856) shall  
18 be an indexed asset for any calendar quarter in  
19 the same ratio as—

20                   “(i) the fair market value of the in-  
21 dexed assets held by such trust at the close  
22 of such quarter, bears to

23                   “(ii) the fair market value of all as-  
24 sets held by such trust at the close of such  
25 quarter.

1           “(C) RATIO OF 80 PERCENT OR MORE.—If  
2           the ratio for any calendar quarter determined  
3           under subparagraph (A) or (B) would (but for  
4           this subparagraph) be 80 percent or more, such  
5           ratio for such quarter shall be 100 percent.

6           “(D) RATIO OF 20 PERCENT OR LESS.—If  
7           the ratio for any calendar quarter determined  
8           under subparagraph (A) or (B) would (but for  
9           this subparagraph) be 20 percent or less, such  
10          ratio for such quarter shall be zero.

11          “(E) LOOK-THRU OF PARTNERSHIPS.—For  
12          purposes of this paragraph, a qualified invest-  
13          ment entity which holds a partnership interest  
14          shall be treated (in lieu of holding a partnership  
15          interest) as holding its proportionate share of  
16          the assets held by the partnership.

17          “(3) TREATMENT OF RETURN OF CAPITAL DIS-  
18          TRIBUTIONS.—Except as otherwise provided by the  
19          Secretary, a distribution with respect to stock in a  
20          qualified investment entity which is not a dividend  
21          and which results in a reduction in the adjusted  
22          basis of such stock shall be treated as allocable to  
23          stock acquired by the taxpayer in the order in which  
24          such stock was acquired.

1           “(4) QUALIFIED INVESTMENT ENTITY.—For  
 2           purposes of this subsection, the term ‘qualified in-  
 3           vestment entity’ means—

4                   “(A) a regulated investment company  
 5                   (within the meaning of section 851), and

6                   “(B) a real estate investment trust (within  
 7                   the meaning of section 856).

8           “(f) OTHER PASS-THRU ENTITIES.—

9                   “(1) PARTNERSHIPS.—

10                   “(A) IN GENERAL.—In the case of a part-  
 11                   nership, the adjustment made under subsection  
 12                   (a) at the partnership level shall be passed  
 13                   through to the partners.

14                   “(B) SPECIAL RULE IN THE CASE OF SEC-  
 15                   TION 754 ELECTIONS.—In the case of a transfer  
 16                   of an interest in a partnership with respect to  
 17                   which the election provided in section 754 is in  
 18                   effect—

19                           “(i) the adjustment under section  
 20                           743(b)(1) shall, with respect to the trans-  
 21                           feror partner, be treated as a sale of the  
 22                           partnership assets for purposes of applying  
 23                           this section, and

24                           “(ii) with respect to the transferee  
 25                           partner, the partnership’s holding period

1           for purposes of this section in such assets  
2           shall be treated as beginning on the date  
3           of such adjustment.

4           “(2) S CORPORATIONS.—In the case of an S  
5           corporation, the adjustment made under subsection  
6           (a) at the corporate level shall be passed through to  
7           the shareholders. This section shall not apply for  
8           purposes of determining the amount of any tax im-  
9           posed by section 1374 or 1375.

10          “(3) COMMON TRUST FUNDS.—In the case of a  
11          common trust fund, the adjustment made under sub-  
12          section (a) at the trust level shall be passed through  
13          to the participants.

14          “(4) INDEXING ADJUSTMENT DISREGARDED IN  
15          DETERMINING LOSS ON SALE OF INTEREST IN ENTI-  
16          TY.—Notwithstanding the preceding provisions of  
17          this subsection, for purposes of determining the  
18          amount of any loss on a sale or exchange of an in-  
19          terest in a partnership, S corporation, or common  
20          trust fund, the adjustment made under subsection  
21          (a) shall not be taken into account in determining  
22          the adjusted basis of such interest.

23          “(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

24          “(1) IN GENERAL.—This section shall not apply  
25          to any sale or other disposition of property between

1       related persons except to the extent that the basis  
 2       of such property in the hands of the transferee is a  
 3       substituted basis.

4               “(2) RELATED PERSONS DEFINED.—For pur-  
 5       poses of this section, the term ‘related persons’  
 6       means—

7                       “(A) persons bearing a relationship set  
 8                       forth in section 267(b), and

9                       “(B) persons treated as single employer  
 10                      under subsection (b) or (c) of section 414.

11       “(h) TRANSFERS TO INCREASE INDEXING ADJUST-  
 12       MENT.—If any person transfers cash, debt, or any other  
 13       property to another person and the principal purpose of  
 14       such transfer is to secure or increase an adjustment under  
 15       subsection (a), the Secretary may disallow part or all of  
 16       such adjustment or increase.

17       “(i) SPECIAL RULES.—For purposes of this section—

18               “(1) TREATMENT OF IMPROVEMENTS, ETC.—If  
 19       there is an addition to the adjusted basis of any tan-  
 20       gible property or of any stock in a corporation dur-  
 21       ing the taxable year by reason of an improvement to  
 22       such property or a contribution to capital of such  
 23       corporation—

24                       “(A) such addition shall never be taken  
 25                      into account under subsection (c)(1)(A) if the



1           aggregate amount thereof during the taxable  
 2           year with respect to such property or stock is  
 3           less than \$1,000, and

4           “(B) such addition shall be treated as a  
 5           separate asset acquired at the close of such tax-  
 6           able year if the aggregate amount thereof dur-  
 7           ing the taxable year with respect to such prop-  
 8           erty or stock is \$1,000 or more.

9           A rule similar to the rule of the preceding sentence  
 10          shall apply to any other portion of an asset to the  
 11          extent that separate treatment of such portion is ap-  
 12          propriate to carry out the purposes of this section.

13          “(2) ASSETS WHICH ARE NOT INDEXED ASSETS  
 14          THROUGHOUT HOLDING PERIOD.—The applicable in-  
 15          flation adjustment shall be appropriately reduced for  
 16          periods during which the asset was not an indexed  
 17          asset.

18          “(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a  
 19          corporation which is not a dividend shall be treated  
 20          as a disposition.

22          “(4) SECTION CANNOT INCREASE ORDINARY  
 23          LOSS.—To the extent that (but for this paragraph)  
 24          this section would create or increase a net ordinary  
 25          loss to which section 1231(a)(2) applies or an ordi-

1        nary loss to which any other provision of this title  
 2        applies, such provision shall not apply. The taxpayer  
 3        shall be treated as having a long-term capital loss in  
 4        an amount equal to the amount of the ordinary loss  
 5        to which the preceding sentence applies.

6            “(5) ACQUISITION DATE WHERE THERE HAS  
 7        BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)  
 8        WITH RESPECT TO THE TAXPAYER.—If there has  
 9        been a prior application of subsection (a)(1) to an  
 10       asset while such asset was held by the taxpayer, the  
 11       date of acquisition of such asset by the taxpayer  
 12       shall be treated as not earlier than the date of the  
 13       most recent such prior application.

14        “(j) REGULATIONS.—The Secretary shall prescribe  
 15       such regulations as may be necessary or appropriate to  
 16       carry out the purposes of this section.

17        “(k) TERMINATION.—For purposes of this section,  
 18       the term ‘indexed asset’ shall not include any asset ac-  
 19       quired after December 31, 2008.”.

20        (b) CLERICAL AMENDMENT.—The table of sections  
 21       for part II of subchapter O of chapter 1 is amended by  
 22       striking the item relating to section 1023 and by inserting  
 23       after the item relating to section 1022 the following new  
 24       item:

“Sec. 1022. Indexing of certain assets for purposes of determining gain or loss.  
 “Sec. 1023. Cross references.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to sales and other dispositions of  
 3 indexed assets after the date of the enactment of this Act,  
 4 in taxable years ending after such date.

5 **SEC. 5. REDUCED CAPITAL GAINS RATE FOR CORPORA-**  
 6 **TIONS.**

7       (a) IN GENERAL.—Section 1201 of the Internal Rev-  
 8 enue Code of 1986 is amended by striking “35 percent”  
 9 both places it appears and inserting “15 percent”.

10       (b) ALTERNATIVE MINIMUM TAX.—Section 55(b) of  
 11 such Code is amended by adding at the end the following  
 12 new paragraph:

13               “(4) MAXIMUM RATE OF TAX ON NET CAPITAL  
 14 GAIN OF CORPORATIONS.—The amount determined  
 15 under paragraph (1)(B)(i) shall not exceed the sum  
 16 of—

17                       “(A) the amount determined under such  
 18 paragraph computed at the rates and in the  
 19 same manner as if this paragraph had not been  
 20 enacted on the taxable excess reduced by the  
 21 net capital gain, plus

22                       “(B) the amount determined under section  
 23 1201.”.

24       (c) TECHNICAL AMENDMENTS.—

1           (1) Section 1445(e)(1) of such Code is amended  
2       by striking “35 percent (or, to the extent provided  
3       in regulations, 15 percent)” and inserting “15 per-  
4       cent”.

5           (2) Section 1445(e)(2) of such Code is amended  
6       by striking “35 percent” and inserting “15 per-  
7       cent”.

8           (3) Section 7518(g)(6)(A) of such Code is  
9       amended by striking “(34 percent in the case of a  
10      corporation)”.

11          (4) Section 607(h)(6)(A) of the Merchant Ma-  
12      rine Act, 1936 is amended by striking “(34 percent  
13      in the case of a corporation)”.

14      (d) EFFECTIVE DATE.—

15          (1) IN GENERAL.—Except as provided in para-  
16      graph (2), the amendments made by this section  
17      shall apply to taxable years beginning after Decem-  
18      ber 31, 2007.

19          (2) WITHHOLDING.—The amendment made by  
20      subsection (c)(2) shall apply to amounts paid after  
21      the date of the enactment of this Act.

○